

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

BOBBY W. LEE,	)	No. C 06-3847 CW (PR)
	)	
Plaintiff,	)	
	)	ORDER OF SERVICE
v.	)	
	)	
M. COLLIER, ET AL.,	)	(Docket no. 2)
	)	
Defendants.	)	

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INTRODUCTION

Plaintiff Bobby W. Lee, a state prisoner currently incarcerated at California State Prison - Sacramento (SAC), has filed this civil rights action under 42 U.S.C. § 1983 and seeks leave to proceed in forma pauperis.

Venue is proper in this district because the injuries complained of occurred when Plaintiff was incarcerated at Salinas Valley State Prison (SVSP) and Corcoran State Prison (CSP), which are both located within the Northern District of California. See 28 U.S.C. §§ 84(a), 1391(b).

BACKGROUND

The following facts are derived from the allegations in Plaintiff's complaint, which are taken as true and construed in the light most favorable to Plaintiff for purposes of the Court's initial review of the complaint. See Parks School of Business, Inc., v. Symington, 51 F.3d 1480, 1483 (9th Cir. 1995).

On June 23, 2003, Plaintiff was in the process of moving his property from cell #107 to cell #110 in Building D-5 at SVSP,<sup>1</sup>

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<sup>1</sup> Plaintiff claims that the reason for the cell move was that he and his cell mate (from cell #107) "did not get along."

1 when the inmates housed in cell #110 assaulted Defendant SVSP  
2 Correctional Officer Marshall E. Denning. Plaintiff was placed in  
3 restraints and interviewed by SVSP prison officials immediately  
4 following the incident. During the interview, Plaintiff claimed  
5 that he "had no knowledge of, nor did he have any involvement in  
6 [the] incident." Later that day, Plaintiff and two other inmates  
7 from cell # 110 were transferred to CSP and placed in  
8 administrative segregation. The Administrative Segregation  
9 Placement Notice dated June 23, 2003 states that the "placement  
10 occurred based on [Plaintiff's] possible participation in 'Assault  
11 on Staff' at SVSP." (See Pl.'s Ex. A.) Plaintiff claims that his  
12 legal documents were confiscated after he was placed in  
13 segregation.<sup>2</sup> He alleges that he remained in CSP's Secured Housing  
14 Unit (SHU) for fourteen months and that he was transferred to SAC  
15 on October 20, 2004.

16 Plaintiff claims that Defendants Lewis and Collier, who signed  
17 the Incident Report regarding a charge of "Attempted Murder of a  
18 Peace Officer" dated June 24, 2003, "conspired to and did violate  
19 Plaintiff's constitutionally protected rights as they (without even  
20 some evidence) or (investigation) . . . concluded and signed  
21 documents which contained fabricated charges." (See Pl.'s Ex. E.)  
22 He also claims that Defendant Pennisi falsely reported in a Rules  
23

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24  
25 <sup>2</sup> Plaintiff also claims that his eyeglasses were confiscated  
26 as a result of his placement in segregation; however, they were  
27 eventually returned to him. While he claims that his glasses were  
28 "broken" when they were returned to him, he fails to allege any  
constitutional violations relating to the confiscation or  
destruction of his eyeglasses. Therefore, the Court will only  
consider his claim relating to the confiscation of his legal  
documents.

1 Violation Report on July 3, 2003 that Plaintiff was involved in  
2 "Conspiracy to Commit Murder/Attempted Murder." (See Pl.'s Ex. D.)

3 Plaintiff filed the present complaint on June 20, 2006,  
4 alleging that Defendants violated his federal and state  
5 constitutional rights based on their involvement in placing him in  
6 segregation for fourteen months without any substantive evidence.  
7 He seeks injunctive relief and monetary damages.

8 STANDARD OF REVIEW

9 A federal court must conduct a preliminary screening in any  
10 case in which a prisoner seeks redress from a governmental entity  
11 or officer or employee of a governmental entity. 28 U.S.C.  
12 § 1915A(a). In its review, the court must identify any cognizable  
13 claims and dismiss any claims that are frivolous, malicious, fail  
14 to state a claim upon which relief may be granted or seek monetary  
15 relief from a defendant who is immune from such relief. Id.  
16 § 1915A(b)(1), (2).

17 To state a claim under 42 U.S.C. § 1983, a plaintiff must  
18 allege two essential elements: (1) that a right secured by the  
19 Constitution or laws of the United States was violated, and  
20 (2) that the alleged violation was committed by a person acting  
21 under the color of State law. West v. Atkins, 487 U.S. 42, 48  
22 (1988). "[A] complaint should not be dismissed for failure to  
23 state a claim unless it appears beyond doubt that the plaintiff can  
24 prove no set of facts in support of his claim which would entitle  
25 him to relief." Terracom v. Valley National Bank, 49 F.3d 555,  
26 558 (9th Cir. 1995) (quoting Conley v. Gibson, 355 U.S. 41, 45-46  
27 (1957)). Pro se pleadings must be liberally construed. Balistreri  
28 v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1988).

## DISCUSSION

## I. Legal Claims

## A. Injunctive Relief Claims

Plaintiff seeks both injunctive relief and money damages (including compensatory and punitive damages). The jurisdiction of the federal courts depends on the existence of a "case or controversy" under Article III of the Constitution. PUC v. FERC, 100 F.3d 1451, 1458 (9th Cir. 1996). A claim is considered moot if it has lost its character as a present, live controversy, and if no effective relief can be granted: "Where the question sought to be adjudicated has been mooted by developments subsequent to filing of the complaint, no justiciable controversy is presented." Flast v. Cohen, 392 U.S. 83, 95 (1968). Where injunctive relief is involved, questions of mootness are determined in light of the present circumstances. See Mitchell v. Dupnik, 75 F.3d 517, 528 (9th Cir. 1996).

When an inmate has been transferred to another prison and there is no reasonable expectation nor demonstrated probability that he will again be subjected to the prison conditions from which he seeks injunctive relief, the claim for injunctive relief should be dismissed as moot. See Dilley v. Gunn, 64 F.3d 1365, 1368-69 (9th Cir. 1995). A claim that the inmate might be re-transferred to the prison where the injury occurred is too speculative to overcome mootness. Id.

Because Plaintiff is no longer incarcerated at either SVSP or CSP, his claims for injunctive relief are DISMISSED as moot. See Mitchell, 75 F.3d at 528.

1 B. Claims Related to Plaintiff's Placement in CSP's SHU  
2 Plaintiff asserts that his placement in segregation for  
3 fourteen months without a hearing and without any substantive  
4 evidence as to his involvement in the June 23, 2003 assault  
5 incident violated his due process and equal protection rights.

6 1. Due Process Claim

7 Construing his complaint liberally, Plaintiff seems to be  
8 challenging both his initial placement in administrative  
9 segregation "pending investigation by SVSP" and the final  
10 disciplinary determination that led to his fourteen-month placement  
11 in CSP's SHU.

12 In Toussaint v. McCarthy, the Ninth Circuit held that when  
13 prison officials initially determine whether a prisoner is to be  
14 segregated for administrative reasons due process requires that  
15 they comply with the following procedures: (1) they must hold an  
16 informal nonadversary hearing within a reasonable time after the  
17 prisoner is segregated, (2) the prisoner must be informed of the  
18 charges against him or the reasons segregation is being considered,  
19 and (3) the prisoner must be allowed to present his views. See  
20 Toussaint v. McCarthy, 801 F.2d 1080, 1100 (9th Cir. 1986). Due  
21 process does not require detailed written notice of charges,  
22 representation by counsel or counsel-substitute, an opportunity to  
23 present witnesses, a written decision describing the reasons for  
24 placing the prisoner in administrative segregation or disclosure of  
25 the identity of any person providing information leading to  
26 placement of a prisoner in administrative segregation. See id. at  
27 1100-01.

28 Before a prisoner may be placed in disciplinary segregation

1 for the violation of prison rules, he or she must be afforded  
2 greater procedural protections than those set out in Toussaint.  
3 First, "written notice of the charges must be given to the  
4 disciplinary-action defendant in order to inform him of the charges  
5 and to enable him to marshal the facts and prepare a defense." See  
6 Wolff v. McDonnell, 418 U.S. 539, 564 (1974). Second, "at least a  
7 brief period of time after the notice, no less than 24 hours,  
8 should be allowed to the inmate to prepare for the appearance  
9 before the [disciplinary committee]." See id. Third, "there must  
10 be a 'written statement by the factfinders as to the evidence  
11 relied on and reasons' for the disciplinary action." Id. (quoting  
12 Morrissey v. Brewer, 408 U.S. 471, 489 (1972)). Fourth, "the  
13 inmate facing disciplinary proceedings should be allowed to call  
14 witnesses and present documentary evidence in his defense when  
15 permitting him to do so will not be unduly hazardous to  
16 institutional safety or correctional goals." Id. at 566. Fifth,  
17 "[w]here an illiterate inmate is involved . . . or where the  
18 complexity of the issues makes it unlikely that the inmate will be  
19 able to collect and present the evidence necessary for an adequate  
20 comprehension of the case, he should be free to seek the aid of a  
21 fellow inmate, or . . . to have adequate substitute aid . . . from  
22 the staff or from a[n] . . . inmate designated by the staff." Id.  
23 at 570.

24 In Superintendent v. Hill, 472 U.S. 445, 455 (1985), the  
25 Supreme Court held that disciplinary proceedings do not satisfy due  
26 process requirements unless there is "some evidence" in the record  
27 to support the findings of the prison disciplinary board. The  
28 Ninth Circuit requires that "some evidence" also support a decision

1 to place an inmate in segregation for administrative reasons. See  
2 Toussaint, 801 F.2d at 1104. The standard is met if there was some  
3 evidence from which the conclusion of the administrative tribunal  
4 could be deduced. See id. at 1105 (citing Hill, 472 U.S. at 455).  
5 Ascertaining whether the standard is satisfied does not require  
6 examination of the entire record, independent assessment of the  
7 credibility of witnesses or weighing of the evidence. See id.  
8 Instead, the relevant question is whether there is any evidence in  
9 the record that could support the conclusion reached. See id.

10 The Ninth Circuit also requires that the evidence relied upon  
11 by prison disciplinary boards contain "some indicia of  
12 reliability," see Cato v. Rushen, 824 F.2d 703, 705 (9th Cir.  
13 1987), but has not directly considered whether a corresponding need  
14 for evidentiary reliability exists when prison officials segregate  
15 an inmate for administrative reasons. Some district courts have  
16 extended the reliability requirement to the administrative context,  
17 however, holding that "the evidence relied upon to confine an  
18 inmate to the SHU for gang affiliation must have 'some indicia of  
19 reliability' to satisfy due process requirements." Madrid v.  
20 Gomez, 889 F. Supp. 1146, 1273-74 (N.D. Cal. 1995).

21 If Plaintiff is complaining of his initial placement in  
22 administrative segregation pending disciplinary proceedings, his  
23 claim will fail because he was provided with all the procedural  
24 protections he was due at that stage. In fact, SVSP prison  
25 officials informed him that "placement occurred based on [his]  
26 possible participation in 'Assault on Staff' at SVSP."

27 Plaintiff alleges that no hearing was held before the final  
28 disciplinary determination that led to his fourteen-month placement

1 in CSP's SHU. He claims that Defendant Pennisi falsified a report  
2 charging Plaintiff with "attempted murder and conspiracy to commit  
3 murder" because of his alleged involvement in the June 23, 2003  
4 incident. He alleges that he was "placed in punitive segregation  
5 with false charges of attempted murder (when Defendants knew  
6 Plaintiff had nothing to do with the charged incident)." Liberally  
7 construing this claim, if Plaintiff is complaining that he was  
8 disciplined based on false charges, he has stated a cognizable  
9 claim because he alleges he was not afforded the Wolff protections.

10 Because the exact nature of Plaintiff's placement in  
11 segregation is unclear, the Court will order service of this claim  
12 so that Defendants may address Plaintiff's claim.

## 13 2. Equal Protection Claim

14 "The Equal Protection Clause of the Fourteenth Amendment  
15 commands that no State shall 'deny to any person within its  
16 jurisdiction the equal protection of the laws,' which is  
17 essentially a direction that all persons similarly situated should  
18 be treated alike." City of Cleburne v. Cleburne Living Center, 473  
19 U.S. 432, 439 (1985) (quoting Plyler v. Doe, 457 U.S. 202, 216  
20 (1982)). A plaintiff alleging denial of equal protection under 42  
21 U.S.C. § 1983 must plead intentional unlawful discrimination or  
22 allege facts that are at least susceptible of an inference of  
23 discriminatory intent. See Monteiro v. Tempe Union High School  
24 Dist., 158 F.3d 1022, 1026 (9th Cir. 1998). Plaintiff must  
25 demonstrate that state actors "acted with the intent to  
26 discriminate." Sischo-Nownejad v. Merced Community College Dist.,  
27 934 F.2d 1104, 1112 (9th Cir. 1991).

28 Plaintiff does not allege that he was placed in segregation



1 because of his race, instead he claims it was based on false  
2 charges against him. In the body of the complaint, his allegations  
3 of racial discrimination are conclusory and ambiguous. Thus, the  
4 Court finds that Plaintiff has not stated a cognizable equal  
5 protection claim.

6 Accordingly, Plaintiff's equal protection claim is DISMISSED.

7 C. Denial of Access to the Courts Claim

8 In conjunction with the aforementioned claims relating to his  
9 placement in CSP's SHU, Plaintiff alleges that Defendants violated  
10 his constitutional right to access to the courts by confiscating  
11 his legal documents, which he needed for an action that was active  
12 at that time.

13 Prisoners have a constitutional right to be afforded "'a  
14 reasonably adequate opportunity to present claimed violations of  
15 fundamental constitutional rights to the courts.'" Lewis v. Casey,  
16 518 U.S. 343, 351 (1996) (quoting Bounds v. Smith, 430 U.S. 817,  
17 825 (1977)). This right applies to prisoners' challenges to their  
18 convictions or sentences or their conditions of confinement. See  
19 id. at 355. Prison officials may not "actively interfer[e] with  
20 inmates' attempts to prepare legal documents or file them." Id. at  
21 350 (citations omitted). In order to state a cognizable claim for  
22 denial of access to the courts, a prisoner must allege an actual  
23 injury. Id. at 349-50. Specifically, the prisoner must allege  
24 that interference by prison officials hindered his or her efforts  
25 to pursue a legal claim. Id. at 351. Even if the prisoner makes  
26 this showing, the denial of access claim will fail if the hindrance  
27 of the prisoner's access to court was reasonably related to  
28 legitimate penological interests. See id. at 361 (citing Turner v.

1 Safley, 482 U.S. 78, 89 (1987)).

2 The Court finds that Plaintiff has asserted a cognizable claim  
3 of denial of access to the courts.

4 D. State Law Claims

5 In addition to the federal claims discussed above, Plaintiff  
6 asserts state law claims against Defendants. Because his state law  
7 claims arise out of the same acts and events giving rise to  
8 Plaintiff's federal claims, the Court will exercise supplemental  
9 jurisdiction over the claims. See 28 U.S.C. § 1367(a).

10 Plaintiff asserts claims against Defendants for violating his  
11 state constitutional rights by filing false reports regarding his  
12 involvement in the June 23, 2003 assault incident. The Court finds  
13 his state law claims cognizable. If Defendants believe Plaintiff's  
14 claims fail to assert valid state law causes of action, they may  
15 seek dismissal of the claims by filing a motion to dismiss. See  
16 Fed. R. Civ. P. 12(b)(6).

17 II. Proper Defendants

18 Liability may be imposed on an individual defendant under  
19 section 1983 if the plaintiff can show that the defendant  
20 proximately caused the deprivation of a federally protected right.  
21 Leer v. Murphy, 844 F.2d 628, 634 (9th Cir. 1988); Harris v. City  
22 of Roseburg, 664 F.2d 1121, 1125 (9th Cir. 1981). A person  
23 deprives another of a constitutional right within the meaning of  
24 section 1983 if he does an affirmative act, participates in  
25 another's affirmative act or omits to perform an act which he is  
26 legally required to do, that causes the deprivation of which the  
27  
28

1 plaintiff complains. Leer, 844 F.2d at 633.<sup>3</sup> Sweeping conclusory  
2 allegations will not suffice; the plaintiff must instead "set forth  
3 specific facts as to each individual defendant's" acts which  
4 deprived him of protected rights. Id. at 634.

5 A. Named Defendants

6 Plaintiff alleges that Defendants Lewis, Collier and Pennisi  
7 acted directly to place Plaintiff in segregation without  
8 justification and to deny him of his legal property, in violation  
9 of his federal and state constitutional rights.

10 Plaintiff fails to directly link Defendants Denning and Caden  
11 to his allegations and instead, he makes conclusory allegations  
12 that they "conspired to and did violate Plaintiff's  
13 constitutionally protected rights."

14 In support of his allegations against Defendant Denning,  
15 Plaintiff attaches the first page of a Complaint for Damages filed  
16 by Defendant Denning against Plaintiff and the other two inmates  
17 involved in the June 23, 2003 incident. (See Pl.'s Ex. N.)  
18 However, the Court finds this attachment is insufficient to warrant  
19 service on Defendant Denning. Therefore, Plaintiff's claim against  
20 Defendant Denning is dismissed with leave to amend. In his amended  
21 complaint, Plaintiff must link Defendant Denning to his claim by  
22 explaining what Defendant Denning did that caused a violation of  
23 Plaintiff's constitutional rights. See Leer, 844 F.2d at 634.

24 Plaintiff claims that Defendant Caden, who is responsible for  
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26  
27 <sup>3</sup> The inquiry into causation must be individualized and focus  
28 on the duties and responsibilities of each individual defendant  
whose acts or omissions are alleged to have caused a constitutional  
deprivation. Leer, 844 F.2d at 633 (citations omitted).

1 running the prison as Chief Deputy Warden, should be liable because  
2 he is "required to follow the letter of the law, and safeguard  
3 Plaintiff's due process [rights]." This is a respondeat superior  
4 claim, that is, Plaintiff seeks to hold Defendant Caden liable as  
5 the superior of the persons Plaintiff contends violated his rights.  
6 This is, however, not a proper basis for Section 1983 liability. A  
7 supervisor may be liable under section 1983 upon a showing of  
8 (1) personal involvement in the constitutional deprivation or (2) a  
9 sufficient causal connection between the supervisor's wrongful  
10 conduct and the constitutional violation. See Redman v. County of  
11 San Diego, 942 F.2d 1435, 1446 (9th Cir. 1991) (en banc) (citation  
12 omitted), cert. denied, 502 U.S. 1074 (1992). "A supervisor is  
13 only liable for constitutional violations of his subordinates if  
14 the supervisor participated in or directed the violations, or knew  
15 of the violations and failed to act to prevent them." Taylor v.  
16 List, 880 F.2d 1040, 1045 (9th Cir. 1989). Accordingly, the claims  
17 against Defendant Caden are dismissed.

18 B. Doe Defendants

19 Plaintiff identifies several Doe Defendants involved in the  
20 review and classification of the report written by Defendant  
21 Pennisi regarding the June 23, 2003 assault incident. The use of  
22 "John Doe" to identify a defendant is not favored in the Ninth  
23 Circuit. Gillespie v. Civiletti, 629 F.2d 637, 642 (9th Cir.  
24 1980). However, where the identity of alleged defendants cannot be  
25 known prior to the filing of a complaint, the plaintiff should be  
26 given an opportunity through discovery to identify them. See  
27 Wakefield v. Thompson, 177 F.3d 1160, 1163 (9th Cir. 1999).

28 Accordingly, the claims against the Doe Defendants are

1 dismissed from this action without prejudice. Should Plaintiff  
2 learn their identities, he may move to file an amended complaint to  
3 add them as named defendants. See Brass v. County of Los Angeles,  
4 328 F.3d 1192, 1195-98 (9th Cir. 2003).

5 CONCLUSION

6 For the foregoing reasons, the Court orders as follows:

7 1. Leave to proceed in forma pauperis is GRANTED (docket no.  
8 2).

9 2. Plaintiff's claims for injunctive relief are DISMISSED.

10 3. Plaintiff has stated COGNIZABLE claims against SVSP  
11 Lieutenant G.D. Lewis and SVSP Correctional Officers M. Collier and  
12 L.M. Pennisi for their involvement in deciding to retain Plaintiff  
13 in segregation for fourteen months, in violation of Plaintiff's  
14 rights to due process and access to the courts.

15 4. Plaintiff's equal protection claim is DISMISSED.

16 5. The Court asserts SUPPLEMENTAL JURISDICTION over  
17 Plaintiff's state law claims.

18 6. Plaintiff's claims against Defendant Denning are  
19 DISMISSED WITH LEAVE TO AMEND as indicated above. Within thirty  
20 (30) days of the date of this Order Plaintiff may file an amended  
21 claim against Defendant Denning (Plaintiff shall resubmit only that  
22 claim and not the entire complaint) as set forth above in Section  
23 II(A) of this Order. The failure to do so will result in the  
24 dismissal of the claim against Defendant Denning without prejudice.

25 7. Plaintiff's claims against Defendant Caden are DISMISSED.

26 8. Plaintiff's claims against the Doe Defendants are  
27 DISMISSED from this action without prejudice.

28 9. The Clerk of the Court shall mail a Notice of Lawsuit and

1 Request for Waiver of Service of Summons, two copies of the Waiver  
2 of Service of Summons, a copy of the complaint and all attachments  
3 thereto (docket no. 1) and a copy of this Order to SVSP Lieutenant  
4 G.D. Lewis and SVSP Correctional Officers M. Collier and L.M.  
5 Pennisi. The Clerk of the Court shall also mail a copy of the  
6 complaint and a copy of this Order to the State Attorney General's  
7 Office in San Francisco. Additionally, the Clerk shall mail a copy  
8 of this Order to Plaintiff.

9 10. Defendants are cautioned that Rule 4 of the Federal Rules  
10 of Civil Procedure requires them to cooperate in saving unnecessary  
11 costs of service of the summons and complaint. Pursuant to Rule 4,  
12 if Defendants, after being notified of this action and asked by the  
13 Court, on behalf of Plaintiff, to waive service of the summons,  
14 fail to do so, they will be required to bear the cost of such  
15 service unless good cause be shown for their failure to sign and  
16 return the waiver form. If service is waived, this action will  
17 proceed as if Defendants had been served on the date that the  
18 waiver is filed, except that pursuant to Rule 12(a)(1)(B),  
19 Defendants will not be required to serve and file an answer before  
20 sixty (60) days from the date on which the request for waiver was  
21 sent. (This allows a longer time to respond than would be required  
22 if formal service of summons is necessary.) Defendants are asked  
23 to read the statement set forth at the foot of the waiver form that  
24 more completely describes the duties of the parties with regard to  
25 waiver of service of the summons. If service is waived after the  
26 date provided in the Notice but before Defendants have been  
27 personally served, the Answer shall be due sixty (60) days from the  
28 date on which the request for waiver was sent or twenty (20) days

1 from the date the waiver form is filed, whichever is later.

2 11. Defendants shall answer the complaint in accordance with  
3 the Federal Rules of Civil Procedure. The following briefing  
4 schedule shall govern dispositive motions in this action:

5 a. No later than ninety (90) days from the date their  
6 answer is due, Defendants shall file a motion for summary judgment  
7 or other dispositive motion. The motion shall be supported by  
8 adequate factual documentation and shall conform in all respects to  
9 Federal Rule of Civil Procedure 56. If Defendants are of the  
10 opinion that this case cannot be resolved by summary judgment, they  
11 shall so inform the Court prior to the date the summary judgment  
12 motion is due. All papers filed with the Court shall be promptly  
13 served on Plaintiff.

14 b. Plaintiff's opposition to the dispositive motion  
15 shall be filed with the Court and served on Defendants no later  
16 than sixty (60) days after the date on which Defendants' motion is  
17 filed. The Ninth Circuit has held that the following notice should  
18 be given to pro se plaintiffs facing a summary judgment motion:

19 The defendants have made a motion for summary  
20 judgment by which they seek to have your case dismissed.  
21 A motion for summary judgment under Rule 56 of the  
22 Federal Rules of Civil Procedure will, if granted, end  
23 your case.

24 Rule 56 tells you what you must do in order to  
25 oppose a motion for summary judgment. Generally, summary  
26 judgment must be granted when there is no genuine issue  
27 of material fact -- that is, if there is no real dispute  
28 about any fact that would affect the result of your case,  
the party who asked for summary judgment is entitled to  
judgment as a matter of law, which will end your case.  
When a party you are suing makes a motion for summary  
judgment that is properly supported by declarations (or  
other sworn testimony), you cannot simply rely on what  
your complaint says. Instead, you must set out specific  
facts in declarations, depositions, answers to

1 interrogatories, or authenticated documents, as provided  
2 in Rule 56(e), that contradict the facts shown in the  
3 defendant's declarations and documents and show that  
4 there is a genuine issue of material fact for trial. If  
5 you do not submit your own evidence in opposition,  
summary judgment, if appropriate, may be entered against  
you. If summary judgment is granted [in favor of the  
defendants], your case will be dismissed and there will  
be no trial.

6 See Rand v. Rowland, 154 F.3d 952, 962-63 (9th Cir. 1998) (en  
7 banc).

8 Plaintiff is advised to read Rule 56 of the Federal Rules of  
9 Civil Procedure and Celotex Corp. v. Catrett, 477 U.S. 317 (1986)  
10 (party opposing summary judgment must come forward with evidence  
11 showing triable issues of material fact on every essential element  
12 of his claim). Plaintiff is cautioned that because he bears the  
13 burden of proving his allegations in this case, he must be prepared  
14 to produce evidence in support of those allegations when he files  
15 his opposition to Defendants' dispositive motion. Such evidence  
16 may include sworn declarations from himself and other witnesses to  
17 the incident, and copies of documents authenticated by sworn  
18 declaration. Plaintiff will not be able to avoid summary judgment  
19 simply by repeating the allegations of his complaint.

20 c. If Defendants wish to file a reply brief, they shall  
21 do so no later than thirty (30) days after the date Plaintiff's  
22 opposition is filed.

23 d. The motion shall be deemed submitted as of the date  
24 the reply brief is due. No hearing will be held on the motion  
25 unless the Court so orders at a later date.

26 12. Discovery may be taken in this action in accordance with  
27 the Federal Rules of Civil Procedure. Leave of the Court pursuant  
28



1 to Rule 30(a)(2) is hereby granted to Defendants to depose  
2 Plaintiff and any other necessary witnesses confined in prison.

3 13. All communications by Plaintiff with the Court must be  
4 served on Defendants, or Defendants' counsel once counsel has been  
5 designated, by mailing a true copy of the document to Defendants or  
6 Defendants' counsel.

7 14. It is Plaintiff's responsibility to prosecute this case.  
8 Plaintiff must keep the Court informed of any change of address and  
9 must comply with the Court's orders in a timely fashion.

10 15. Extensions of time are not favored, though reasonable  
11 extensions will be granted. Any motion for an extension of time  
12 must be filed no later than fifteen (15) days prior to the deadline  
13 sought to be extended.

14 16. This Order terminates Docket no. 2.

15 IT IS SO ORDERED.

16 DATED: 6/11/07



17  
18 CLAUDIA WILKEN  
19 United States District Judge  
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UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

BOBBY LEE,

Plaintiff,

v.

M. COLLIER et al,

Defendant.

Case Number: CV06-03847 CW

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on June 11, 2007, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Robert Lee T-88957  
F.B. 8-102 Low  
CA State Prison-New Folsom  
P.O. Box 290066  
Represa, CA 95671-0066

Dated: June 11, 2007

Richard W. Wicking, Clerk  
By: Sheilah Cahill, Deputy Clerk

United States District Court  
For the Northern District of California